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ABSTRACT

Professional and disciplinary rhetoric often breaks down when texts cross professional boundaries. An ethnographic study conducted in an Indiana courtroom during a civil trial demonstrates the failure of disciplinary rhetoric. Despite the fact that the plaintiffs in a personal injury case had demonstrated the negligence of the defendant according to the rules of legal logic, they lost the case. The jurors were following their own narrative script of the events portrayed in the courtroom. If the testimony, expert or not, did not fit that script, they did not consider it. The trial highlights a scene in which the rhetoric of expertise, the very thing taught in textbooks, does not work, does not apply, and is not convincing. In four composition textbooks, logical reasoning and textual authority is the privileged form of argument, if not the only form. Argument by narrative, so important to the jury members, is banished from most courses about academic argumentative writing. It is time to recover the commonsense narrative, letting its voice compete with that of academic reasoning and the rhetoric of expertise. (A figure presenting the competing schemata in the civil court case, and a figure offering brief defining quotes from the four composition textbooks are included.) (RS)

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SCENES FROM THE CIVIL COURTROOM: RHETORIC, EXPERTISE, AND COMMONSENSE NARRATIVES

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As Jim Paradis suggests in "Text and Action," Carl Herndl, Barbara Fennell, and Carolyn Miller argue in "Understanding Failures" and I suggest in "Text in Oral Contexts," professional and disciplinary rhetoric often breaks down when texts cross professional boundaries. These three articles and others recently published begin to affirm the necessity of complicating composition's study of discourse communities. Too often, we see professional and academic disciplines in isolation, discounting the importance of writing across disciplinary lines. The Herndl, Fennell, and Miller study of communication failure at Three Mile Island and Morton Thiokol locates the problems in cross-cultural communication between management and eningeering. My own work on jury instructions suggests that the legal community has little or no understanding of how to communicate outside its own disciplinary boundary. As Paradis explains in the conclusion of "Text and Action," a study of the interface between technical, legal, and nonexpert discourses, applied to the written warnings of the dangers of a widely used studgun:

> As individuals avail themselves of the specialized knowledge modern society has spawned, the "semantic environment" becomes an information marketplace in which expertise is constantly reconstructed in behavioral terms of action for the nonexpert. This procedural discourse, however, is not without its social problems. As a given technology becomes more complex, it becomes harder to understand and to manipulate according to the dictates of common sense. (275)

It is to that interface that I want to speak today. In this paper, I want to argue two points. First, that within the realm of civic discourse, the world in which we conduct our ordinary affairs, make law, vote, enforce law, and settle

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disputes, disciplinary rhetoric fails. I'm going to demonstrate that first point through reference to work I have done in the legal discourse community, work which points to the failure of disciplinary rhetoric and language. Second, I want to argue that current and traditional practices in teaching composition are implicated, the former in failure to recognize that so-called generic argumentation, induction, deduction, fallacies is professional and disciplinary in orientation, the latter in focusing on knowledge of specific disciplinary communities as a basis for discourse within the community, and little attention to discourse with those outside the community. And I will demonstrate the second point by reference to a variety of composition textbooks invoking argument.

My own scene of considering expertise is that of the courtroom, that arena in which two advocates bring testimony to bear on an issue. This scene is complicated by two factors, the attorneys' own professional discourse and the professional discourse of experts brought in to testify in the case. Jurors hearing this doubling of professional discourse make sense of the scene by referencing their own commonsense narratives of the events initiating the trial and of the courtroom events themselves.

My case in point is an ethnographic study I conducted in an Indiana court in the late 1980's. My overall interest was in examining the differing comprehension of the jurors and legal participants in a civil trial. I chose a civil trial because I am interested in the scene in which we settle our ordinary disputes with one another: bad debts, poor performance of a product, injuries resulting from one another's negligence, and the failure of relationships. I was a participant-observer in the trial, sitting at the trial bailliff's seat for most of the trial, listening to back hallway conversations during recesses in the trial, and completing retrospective interviews with both jurors and attorneys after the trial was completed.

This was a simple accident trial, the kind civil trial attorneys call p.i. cases. One driver ran a stop sign, a sign he claimed he didn't know was there. The first driver hit a second driver, whose wife was in the passenger seat. The second driver's car was damaged, and he and his wife both claimed soft tissue

injuries. For the plaintiffs, the second driver and his wife, the legal logic was on their side: in Indiana, running a stop sign is negligence per se. And testimony was on their side: a truck driver, an expert one might say in driving, witnessed the accident, and their doctor testified as to the nature and extent of their injuries. Logic and evidence notwithstanding, the plaintiffs lost their case.

Most of the analysis I did from my ethnographic data was linguistic in nature. I examined the use of legal language closely, from both the perspective of the lawyers and from that of the jurors. But my most important rhetorical finding was in coming to understand how jurors decided the case: it wasn't on the professional rhetoric, with its attendant academic logic basis, nor was it on the basis of expert opinion. Instead, it was through the "fit" of the testimony to jurors' pre-existing narrative scheme of common accidents.

If you'll turn to Figure 1, I will outline the case, as lawyers and jurors understood its framework. In the lefthand column, I have listed the legal schemata of the case. Notice that it is highly deductive, starting with a universalized legal principle, moving to a particular instantiation of that principle, with a conclusion, placing the particular instantiation into the universalized legal principle. That process, classical deductive reasoning, combined with academic proofs of authority and evidence, repeats throughout the legal schemata of the case. In the center column are the events of the accident. In the righthand column is the schemata of the jurors' understanding, highly narrative rather than deductive.

One legal requirement, read to the jurors as instructions for deciding the case, was that all drivers have a duty to be careful and reasonably prudent. But running a stop sign is statutory negligence. Running a stop sign means the driver wasn't being careful and reasonably prudent. Yet both drivers testified that the first driver did run the stopsign. Moreover, at the end of the trial, the defendant admitted that he was at fault in the accident. Ergo, the legal logic was closed: the first driver was negligent. But in the eyes of the jury, he was not. Why not? Because he was still being careful and prudent, in terms

of the narrative schemata driving their understanding of the trial events.

As we examine the dental and medical testimony in support of the plaintiffs' injuries, we see even less force to the logical-evidentiary logic of the legal community in the eyes of the jurors. The plaintiff's attorney asks the dentist involved in the case the following question:

> Would you relate to the jury what Terry Blankenship's medical history was?

The dentist replied:

> She had been in an automobile accident and she was having what she considered migraine headaches, her jaw was popping, she had neck and shoulder pain. Her neck, she had pain there and she had restricted movement, she couldn't turn her head all the way around as you would in normal movement. She had facial pain. She had pain behind her eyes and when she had the migraine headaches, she had visual disturbances.

The dentist is giving a description of the pain associated with temporal mandibular joint syndrone, a fairly common aftereffect of jaw dislocations, again common in these kinds of accidents. When asked if this type of injury was consistent with the kind of accident the plaintiff had had:

> All right, now, is that consistent with a TMJ problem, that type of impact?

And the dentist replied, using further expertise to make his point:

> Um, yes, Dr. Victor Minsk at UCLA says that at anytime there is an accident like this where whiplash is involved, that 99% of the time you'll have a temporal mandibular joint problems.

The plaintiffs' attorney continued this line of questioning by asking:

> All right, and the force of the impact, what has that, what relationship does that have to the injury?

Once again, the dentist invokes other expertise, along with his own to reply:

> Well, it depends upon if the impact to the car is really strong--heavier than, usually there is a lot of damage to the car. The seats are pulled loose and you have broken bones where the head hits the windshield and the

> steering wheel, and what have you. If the impact is less, where the car doesn't absorb all of the impact--that's Victor Henry Eroka, M.D., who wrote a really lengthy article on impact at 15 mph when you get more whiplash type injury and ligamentous soft tissue damage than you have at a high rate of impact.

This is the kind of testimony that we all direct our students to seek when we are teaching argumentation. Who knows best about an injury? Our answer, bounded in expertise, would be a medically trained doctor or dentist. That is certainly what the plaintiffs had in abundance in this trial. In addition to the dentist, they had a doctor testify, a doctor who specialized in soft tissue injuries. They had bills, documents of medical appointments, xrays, photographs, lost time records from their respective employment. The legal requirement for proof was to have these items: the testimony of one in a position to know about their injuries and documentary evidence of the injuries. Moreover, their very experts on the witness stand, quoted other experts who gave the standard of practice for the area. Translate this back into the composition classroom, if you will. The student is told that she must offer logical proof, that is, structure an argument in ways that are reasonable, and she must find evidence to support her argument, textual evidence, and the best authorities for her support. What she should have is a convincing argument. And it is a convincing argument in the academic world. But it is not in the world of civic discourse.

What did these jurors have to say about the logical form of the arguments and the evidence offered? In the interview of Juror No 1, Marsha Connolly, she found a conflict between how she thought accidents took place and how this accident was described in testimony. For another juror, Max Morgan, the narrative requirement that there be significant damage to the car overcame evidence that the plaintiffs' car was of a color he personally knew required extra repainting. For Rachel Stern, the narrative requirement that medical attention be sought immediately overcame compelling evidence that the plaintiffs were in fact injured in the accident. Stern understood the medical and dental testimony from her own training as a nurse. She knew that people could be

seriously injured at low rates of speed and suffer enormous pain. Yet the plaintiffs didn't go to the hospital immediately and thus by the time the defendant testified, she was willing to give more weight to the defendant saying he didn't see that anyone was injured, so much weight she was willing to forgo her earlier conclusion that the plaintiffs were in fact injured.

One of the elements of damage to be proved to the jury was related to the color of the Plaintiffs' automobile. An "expert" driver of sorts, a professional truck driver, was a witness to the accident and testified at the trial on behalf of the Plaintiffs. During the truck driver's testimony, he identified the color of the car no less than 14 separate times. It was, in fact, the identifier he used to describe the Plaintiffs' actions in the accident. The fact that the car was metalflake gold, a color requiring a special paint job to restore, was important in terms of deciding how much damage the Plaintiffs had incurred in the accident. Yet when the jury deliberated, they were unable to remember that the Plaintiffs' car was metalflake gold. Their response was to award the Plaintiffs a minimal amount for the repainting of the automobile. Why? The jurors were following their own narrative script of the accident events. In order for their to have been serious damage, requiring more than minimal amounts of compensation, the car would have needed to have been towed from the accident scene. In short, as the third column of the Figure 1 indicates, jurors were operating by a narrative script of accidents and if the testimony, logical, expert or not, didn't fit the script, they didn't consider it. The jurors' conclusion at the end of the trial was there was no negligence, no serious damage, and no injury.

Originally, I analyzed this as a problem of trying to make jurors understand the demands of the legal discourse. From the perspective of rhetoric and composition, I would suggest that the trial highlights a scene in which the rhetoric of expertise does not work, does not apply, and is not convincing. Yet that is the very thing we find in our textbooks. Now, let's turn to the textbook analysis in Figure 2.

I have tried here to select a range of textbooks, each of which taking up the issue of argument, though in a variety of ways. Annette Rottenberg's

Elements of Argument is both a rhetoric and a reader, oriented toward broad public policy issues, indicated by the topical presentation of readings. It is one of the few currently available texts to make full use of Stephen Toulmin's informal logic model. The Kaufer-Geisler-Neuwirth text, Arguing from Sources, is a rhetoric of purely academic writing, dependent on secondary sources for authority. As such, it is remarkably different from the Rottenberg text. Kaufer et al. conceives of and presents argument solely through the usefulness of evidence for the policy issue being debated. A student determines and analyzes that usefulness by labeling sources in secondary texts, identifying issues through logic trees, and clustering material for importation into the student's own text. No unanalyzed readings are presented in this text. Richard Miller's Informed Argument is oriented toward public policy and has two opening segments offering an apparatus for argument: one is logical; the other is textual. After the argument apparatus, various readings on public policy issues follow. Finally, the Malcolm Kiniry and Mike Rose text, Critical Strategies for Academic Writing, explicitly locates the reasoning they present in academic discourse. How argument procedes is integrated into academic modes, applied in disciplinary fashion. Thus, serializing, for example, is slightly different when to psychology than it is when applied to English.

In Figure 2, I offer brief defining quotes from each of the above textbooks. It is, of course, unfair to offer metonymy, i.e., the brief quotes, as the only representations of these texts. And I do not mean to suggest that these are not useful textbooks in other ways. But the quotes I have selected here define the understanding of argument that the textbook authors offer students. In all four cases, argument--logical reasoning and textual authority--is the privileged form of argument, if not the only form. Students are told, and consequently we imply if we use the textbooks without speaking to the problem, that logical reasoning and textual authority and expertise should win the day in any plausible arena of argument.

Both by presentation of public policy issues in readings and of emphasis on logical analysis, the Rottenberg and Miller texts collapse the rhetoric of

expertise, academic reasoning, into the world of civic discourse. In the Rottenberg text, there is a conflation of ethical and emotional appeals in the argumentation definition. As she says, "In real-life arguments about social policy, the distinction [between ethical-emotional and logical arguments] is hard to measure" (9). The point of argumentation, she says, is to persuade Likewise, the Kaufer et al. text asserts that argumentative texts have authors who "[take] a position on an issue and [try] to convince you to accept it" (18). Both of these texts are analytical in their treatment of what the student should be doing as a reader of argumentative texts. In Rottenberg, students are to read (and one presumes to write) through the Toulmin model of claims, supports, and warrants. In Kaufer et al., though students are clearly reading in preparation for writing, in text-mining operations, the procedures of labeling, clustering, sorting, and drawing trees are an obviously analytical as the Toulmin analysis of the Rottenberg text. The Kiniry and Rose text, while explicitly locating this discourse in the academy, offer argument modes, such as serializing, summarizing, and analyzing as general purpose models, even across disciplines in the academy and as a general mindset of "critical." Their emphasis is on the "attempt to persuade with evidence and reasoning" (373). Their concept of critical makes these categories of academic reasoning transportable, useful in a broad range of contexts, not just disciplinary in nature. The Miller text, finally, is more overt than the other three in its declaration that "by learning how to organize your beliefs and support them with information that will make other people take them seriously," you can, as he says, "fulfill desire" (1). It is worth our taking a careful look at the items on Miller's list of potential desires: truth, a raise, an extension on a paper, a job application, a marriage proposal, a recommendation for policy change. We should ask ourselves how many of these arguments would be won by logical reasoning and academic expertise.

Where, we might ask, is argument by narrative, the storytelling the jurors I studied found so ultimately persuading? Argument by narrative is, I would suggest banished from most courses about academic argumentative writing. The study of narrative itself is relegated to the literature classroom, but even

there academic writing about the narrative is confined to the analytical modes of argument, typological categorizations of narrative. The rhetoric of expertise, academic and disciplinary argument, is analytic in routine, information and authority oriented in context. The rhetoric of commonsense narratives, ordinary argument, is holistic in routine, narratively oriented in context, aiming for the culturally relevant tale. Because academics generally keep their practitioner lore out of textual forms, we may have drawn a faulty opposition for our students. We seem to be saying that other voices, other arenas hear only our own forms of reasoning. That is, if it's a story, it can't be an argument.

I imagine an argumentative writing classroom in which narrative is interrogated side-by-side with the persuasiveness of academic reasoning and the rhetoric of expertise. Such a classroom would allow students to critique argument by movement across disciplinary lines and lines drawn between the professional and the non-professional speaker/writer, where we now declare by fiat as non-existent. Don Bialostosky locates this process in Bakhtinian voice, as he says,

> Bakhtin illustrates such insulation of verbal domains in the life of a peasant who moves from the language of the church to the language of the family to the language of official transactions without giving the differences among them a second thought.
>
> But in the forum and the consciousness where all these languages meet and compete to be chosen, no such blithe passage from one to another is possible, and the participation in diverse knowledge communities opens a struggle among them that knowledge of conventions and mannerly behavior cannot resolve. For Bahktin, self-conscious participation in that struggle marks the free and educated consciousness--the dialogic self. (22)

We need to go beyond the now conventionalized division between "generic" academic writing and disciplinary writing. It is, as Bialostosky suggests, the writing classroom "where these languages meet and compete to be chosen." Though his

point of reference is to disciplinary writing, it is not just academic persuasiveness that we need to bring into our writing classrooms. It's time to recover the commonsense narrative, letting its voice compete with that of academic reasoning and the rhetoric of expertise. *

* Readers, please note: A further revised version of this paper has been submitted to Studies in Technical Communication.

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RHETORIC, EXPERTISE, AND COMMONSENSE NARRATIVES

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FIGURE 1
COMPETING SCHEMATA

Legal Logic/Requirements	Events	Jurors' Commonsense Narratives
Duty to be careful and reasonably driver. Proof Testimony of driver Testimony of expert driver	D1 enters intersection	A driver looks, concludes the way is clear, and proceeds.
Duty to be careful and reasonably driver. Proof Testimony of driver Testimony of expert driver	D2 enters intersection without stopping.	Drivers are ordinarily aware of road conditions and don't expect stop at intersections that don't look busy. D2 would have stopped if it had appeared appropriate.
Failure to perform duty D2 runs stopsign negligence <u>per se</u> Proof Testimony of drivers Statutory definition met deductive logic	D2 hits D1	He really shouldn't have been expected to know the stop sign was there, so he isn't negligent.
Damages and injuries result Proof Documentary evidence Photographic evidence Testimony of drivers. inductive logic	D1's car damaged	"Real" damage must be significant and highly visible. The car has to be towed away. Police come to accident scene.
Documentary evidence Testimony of doctor/expert evidentiary logic	D1 and passenger are injured	"Real" injuries require the arrival of an ambulance, the police, and a hospital visit. People continue visiting the doctor until cured, following the doctor's advice.
Legal proof of negligence met	Accident complete	Narrative reasoning says no negligence.

FIGURE 2
ARGUMENT DEFINED IN COMPOSITION TEXTS: EXPERTISE NOT COMMONSENSE

Rottenberg, <u>Elements of Argument</u>

Argumentation is the art of influencing others, through the medium of reasoned discourse, to believe or act as we wish them to believe or act. A distinction is sometimes made between argument and persuasion. Argument, according to most authorities, gives primary importance to logical appeals. Persuasion introduces the element of ethical and emotional appeals. The difference is one of emphasis. In real-life arguments about social policy, the distinction is hard to measure. In this book we use the term <u>argument</u> to represent forms of discourse that attempt to persuade readers or listeners to accept a claim, whether acceptance is based on logical or emotional appeals or, as is usually the case, on both. (9-10)

Text offers Toulmin claim, support, warrant informal logic, as well as sections on induction, deduction, and evidence, and logical fallacies.

Kaufer, Geisler, Neuwirth, <u>Arguing from Sources</u>

[After defining the "issue" through Agent/Action/Goal/Result analysis] The particular objects of your search are the argumentative texts that represent major positions on your issue. An <u>argumentative text</u> is one in which an author takes a position on an issue and tries to convince you to accept it. . . . In putting

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together a set of argumentative texts, you must be careful not to include texts that are merely informative. An informative text is simply one in which an author simply surveys what is currently known or believed about an issue. (18)

Text offers expertise-oriented, academic texts as evidence from "sources." The authors advise students, for example on a second reading of a source to "label" for the author's sources and to cluster points. The text is heavily dependent on expertise for persuasive texts.

Miller, <u>The Informed Argument</u>

Argument is a means of fulfilling desire. That desire may be for something as abstract as truth or as concrete as a raise in salary. When you ask for an extension on a paper, apply for a job, propose a marriage, or recommend any change that involves someone besides yourself, you are putting yourself in a position that requires effective argumentation. In the years ahea, you may also have occasion to argue seriously about political and ethical concerns. . . By learning how to organize your beliefs and support them with information that will make other people take them seriously, you will be mastering one of the most important skills you are likely to learn in college. (1)

Text offers two basic approaches: reasoning and evidence. "An Introduction to Argument" includes induction, deduction, and Toulmin model reasoning. "Working with Sources" stresses textual evidence.

Kiniry and Rose, <u>Critical Strategies for Academic Writing</u>

The tremendous value of these movements (disciplinary writing courses) has been to increase teachers' awareness of the specialized reading and writing demands of various disciplines, and, more theoretically, to move them to examine communities of discourse within the academy. One potential liability of these movements has been their tendency to represent writing instruction in a fairly service-oriented, product-directed way, that is, to assist students in learning the forms and conventions of sociology, biology, literature, and so on. Such instruction is valuable and sorely needed, and at places in <u>Critical Strategies</u> we try to provide it. But our sense is that, at least in some settings, it is not adequately critical and self-examining. (vii)

To argue is to attempt to persuade with evidence and reasoning. In this general sense, most academic writing argues. Certainly you've done plenty of arguing if you've attempted some of the earlier exercises in this book. Defining, serializing, classifying, summarizing, comparing, and analyzing all can be seen as strategies of argument. . . . Usually an argument draws on breadth of material and knowledge, seldom relying solely on a single text. Usually an argument treats a topic about which there are differences of opinion; some real persuading needs to be done. A good argument usually takes into consideration a variety of points of view--not necessarily balancing them, but acknowledging that they exist. Most arguments emphasize their own logic: A writer questions other people's assumptions and clarifies his or her own. A writer calls attention to the relations among starting points, evidence, and conclusions. (373-374)

The text examines primarily traditional modes, with the additions of serializing, summarizing and analyzing, through the lens of various disciplinary perspectives.

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